FILE COPY

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1941.

No. 321

STONITE PRODUCTS COMPANY,

Petitioner,

vs.

THE MELVIN LLOYD COMPANY,

and

J. A. ZURN MFG. COMPANY,

Respondents.

ON WRIT OF CERTIORARI
To the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR PETITIONER

CHARLES W. RIVISE,
Counsel for Petitioner,
1321 Arch Street,
Philadelphia, Pa.

A. D. Caesar,
David S. Gifford,
Of Counsel.

The Butler Press, Cooperstown, N. Y. — Geo. Kornblatt, Phila. Rep.
832 Bankers Sec. Bldg. — Pennypacker 7124-5.

SUBJECT INDEX.

CASES CITED.

OTHER AUTHORITIES CITED.

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941.

No. 321.

STONITE PRODUCTS COMPANY, *Petitioner,*

vs.

THE MELVIN LLOYD COMPANY and
J. A. ZURN MFG. COMPANY, *Respondents.*

ON WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
for the Third Circuit.

BRIEF FOR PETITIONER.

OPINIONS BELOW.

The opinion of the District Court is reported at 36 Fed. Supp. 29 (R. 10-12).

The opinion of the Circuit Court is reported at 119 Fed. Rep. (2nd) 883 (R. 15-21).

JURISDICTION.

1. The decision of the Circuit Court of Appeals was entered on May 13, 1941.

2. The petition for certiorari was filed July 30, 1941, and was granted October 13, 1941.

3. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347), and Section 5 (b) of Rule 38 of this Court.

QUESTION PRESENTED.

The only question involved is:

May an alleged infringer of a patent, who resides in a state divided into judicial districts, be sued over his objection in one of the districts of said state in which he neither resides nor has a regular and established place of business, merely by joining him as a co-defendant with an alleged infringer who does reside in said district?

More particularly stated, the question is:

Is the Western District of Pennsylvania the proper venue for a suit for patent infringement against a resident of the Eastern District of Pennsylvania, who does not have a regular and established place of business in the Western District, but who has been made a co-defendant with a resident of said Western District?

STATUTES INVOLVED.

The statutes involved will be found in the Appendix, *infra*, pp. 21-22.

STATEMENT OF CASE.

Your petitioner, Stonite Products Company, was sued jointly with Lowe Supply Company in the District Court for the Western District of Pennsylvania for the alleged infringement of a patent (Patent No. 1,777,759 for a boiler stand).

Lowe Supply Company is an inhabitant of the Western District, and was served in said district. Lowe Supply Company defaulted and the suit proceeded to judgment against it.

Your petitioner is an inhabitant of the Eastern District of Pennsylvania, and does not have a regular and established place of business in the Western District, where the suit was filed.

Your petitioner was served in the Eastern District of Pennsylvania, and entered a special appearance and moved to dismiss or quash the return of service on the ground that the venue as to your petitioner was laid in the wrong district. The District Court granted the motion and dismissed the cause of action as to your petitioner. The respondents appealed, and the Circuit Court of Appeals reversed the decision of the District Court and remanded the cause with directions to reinstate the complaint against your petitioner.

SUMMARY OF CIRCUIT COURT'S DECISION.

The Circuit Court stated at the outset of its opinion that the controversy centers about the construction of Sections 48 and 52 of the Judicial Code (28 U. S. C. 109 and 113), the former dealing with venue in patent infringement suits and the latter being a general statute as to venue in the district courts of those states which have been divided into two or more judicial districts.

The Circuit Court reviewed the legislative history and the reasons which led to the enactment of said sections of the Judicial Code and concluded that Section 52 applies to patent cases to the same extent as to other cases not of local nature. Section 52 was therefore construed so as to enlarge the meaning of the phrase "the district of which the defendant is an inhabitant", which appears in Section 48. As a consequence, the Circuit Court decided that despite the clear and unambiguous language of Section 48, an alleged infringer of a patent may be sued in a district of which he is not an inhabitant and in which he does not have a regular and established place of business, *merely by joining him with an alleged infringer who is an inhabitant of said district.*

In reaching its decision, the Circuit Court apparently admitted that its reasoning was contra to statements of this Court in *In re Hohorst*, 150 U. S. 653, 661-662 and in *In re Keasbey & Mattison Co.*, 160 U. S. 221, 230, but characterized these statements as being merely *obiter dicta* and hence not binding.

SPECIFICATION OF ERRORS.

1. That the Circuit Court of Appeals erred in holding that the provisions of Section 52 of the Judicial Code (28 U. S. C. 113), authorizing a single suit to be brought against defendants residing in different districts in a state divided into judicial districts, apply to patent suits to the same extent as to other non-local suits.

2. That the Court below erred in holding that an alleged infringer of a patent, despite the clear language of Section 48 of the Judicial Code (28 U. S. C. 109), may be sued in a district of which he is not an inhabitant and in which he does not have a regular and established place of business, merely by joining him with an alleged infringer who is an inhabitant of said district.

3. That the Court below erred in holding that the statement of this Court in *In re Hohorst*, 150 U. S. 653, 661-662, as to the proper venue in patent cases was a mere *dictum*.

4. That the Circuit Court of Appeals erred in reversing the decision of the District Court and remanding the cause with directions to reinstate the complaint against your petitioner.

SUMMARY OF ARGUMENT.

POINT I. Venue in suits for patent infringement is controlled by Section 48 of the Judicial Code (28 U. S. C. 109).

POINT II. The meaning of the phrase "the district of which the defendant is an inhabitant", which appears in Section 48 is not enlarged by Section 52 of the Judicial Code (28 U. S. C. 112).

(a) Section 52 is a general venue statute and does not apply to patent suits.

(b) The history of Section 48 clearly shows that the general venue statutes were not intended to apply to patent suits.

(c) An interpretation of Section 52 to make it apply to patent suits would render portions of the section inconsistent with each other.

POINT III. The decision of the Circuit Court constitutes a radical departure from the law relating to venue as it has been applied with substantial uniformity for at least 45 years.

ARGUMENT.

POINT I.

Venue in suits for patent infringement is controlled by Section 48 of the Judicial Code (28 U. S. C. 109).

In *General Electric Co. v. Marvel Rare Metals Co.*, 287 U. S. 430, 434, this Court stated:

> "Section 24 (7) of the Judicial Code is the source from which district courts derive jurisdiction of cases arising under the patent laws. Under that clause and until the enactment of §48 a suit for infringement might have been maintained in any district in which jurisdiction of defendant could be obtained. *In re Hohorst*, 150 U. S. 653, 661., And see *In re Keasbey & Mattison Co.*, 160 U. S. 221-230. *Section 48 relates to venue. It confers upon defendants in patent cases a privilege in respect of the places in which suits may be maintained against them.* And that privilege may be waived....." (Italics added.)

Section 48 restricts the venue in patent cases to *the district of which the defendant is an inhabitant,* or *any district in which the defendant shall have committed acts of infringement and shall have a regular and established place of business.*

As has been stated, the suit was filed in the Western District of Pennsylvania. Your petitioner (Stonite) is an inhabitant of the Eastern District of Pennsylvania and does not have a regular and established place of business in the Western District. Furthermore, your petitioner made timely objection. Hence, it is respectfully submitted that the District Court for the Western District of Pennsylvania did not acquire jurisdiction over your petitioner. (*W. S. Tyler Co. v. Ludlow-Saylor Wire Co.*, 236 U. S. 723, 725.)

POINT II.

The meaning of the phrase "the district of which the defendant is an inhabitant", which appears in Section 48 is not enlarged by Section 52 of the Judicial Code (28 U. S. C. 112).

The Circuit Court conceded that Section 48 precludes a patent suit against a defendant in a district *in which the defendant does not reside and does not have a regular and established place of business.*

The Circuit Court, however, took the novel (and we think erroneous) position that Section 52 enlarges the meaning of the phrase "the district of which the defendant is an inhabitant" to include several districts in the same state, *provided that alleged infringers in each of the districts are joined in a single suit in one of the districts.*

It is our position that the meaning of the phrase in question cannot be enlarged in the manner suggested for at least the reasons which will now be discussed.

(a)

Section 52 is a general venue statute and as such does not apply to patent suits.

Section 52 must be considered in connection with Section 51 (28 U. S. C. 112), as Section 51 specifically refers to Section 52.

Briefly stated, the pertinent portion of Section 51 provides that, except as provided in Section 52, no civil suit shall be brought in any district court against any person *in any other district than the one in which he resides.*

Section 52, insofar as it is pertinent to the present case, provides that when a state is divided into judicial districts,

every suit not of a local nature in a district court of the state *must be brought in the district where the defendant resides;* but if there are two or more defendants residing in different districts of the state, the suit may be brought in either district.

Section 51 is derived from the Act of March 3, 1887, and Section 52 is derived from the Act of May 4, 1858. Section 48 was first enacted March 3, 1897.

Prior to the Act of 1887 (Section 51) suit could be instituted against an inhabitant of the United States in *the district of which he was an inhabitant or in which he was found at the time of serving the writ.* The Act of 1887 restricted venue to the *district in which the defendant was an inhabitant.*

In 1893, the Supreme Court decided that the Act of 1887 applied only to *cases in which the federal and state courts have concurrent jurisdiction,* and hence did not apply to patent suits, of which the federal courts have exclusive jurisdiction. (*In re Hohorst,* 150 U. S. 653, 661). The Court therefore concluded that after the Act of 1887, just as prior thereto, a defendant in a patent suit could be sued *wherever found.* The *Hohorst case* was cited with approval in *In re Keasbey & Mattison Co.,* 160 U. S. 221, 229-230. As will hereinafter be pointed out, the Act of 1897 (Section 48) was passed by Congress *for the express purpose of restricting venue in patent cases so that a defendant would not be subject to suit wherever found.*

The Circuit Court refused to be bound by the statements in the *Hohorst* and *Keasbey & Mattison* cases as to venue in patent suits on the ground that these statements are merely *obiter dicta.*

It is respectfully submitted that the statements in question are not merely *obiter dicta.*

The *Hohorst* case clearly involved the question of venue in patent cases. This Court held that the general venue statutes did not apply for two reasons: First, that the defendant was an alien corporation, and hence it was not an inhabitant of any district. Second, that the suit was brought under the patent laws.

The Court could have effectively disposed of the question of venue on either ground. The fact that it gave both grounds made neither of them *dicta*. The second ground of the decision is certainly no more *dicta* than the first ground.

In *United States v. Title Insurance & Trust Company et al.*, 265 U. S. 472, 486, this Court stated:

> ".....The premise of the contention is right but the conclusion is wrong; for where there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, 'the ruling on neither is *obiter*, but **each is the judgment of the court and of equal validity with the other'**. *Union Pacific R. R. Co. v. Mason City & Fort Dodge R. R. Co.*, 199 U. S. 160, 166; *Railroad Companies v. Schutte*, 103 U. S. 118, 143." (Emphasis added.)

To the same effect is the following quotation from *Richmond Screw Anchor Company v. United States*, 275 U. S. 331, 340:

> ".....It does not make a reason given for a conclusion in a case *obiter dictum* that it is only one of two reasons for the same conclusion....."

Referring to the *Keasbey & Mattison* case, this was a suit under the trade-mark laws. The petitioner, being under the mistaken impression that the jurisdiction of the federal courts in trade-mark cases, as in patent cases, was exclusive and not concurrent, contended that the general venue statutes did not apply and that a defendant could be sued *where found*. This Court pointed out that the

jurisdiction of federal courts in trade-mark cases is concurrent and that the general venue statutes do apply.

The following language from this Court's decision in the *Keasbey & Mattison* case is thought to be particularly significant:

> "In the case of *Hohorst*, petitioner, 150 U. S. 653, ...the decision was that the provision of the act of 1888, forbidding suits to be brought in any other district than that of which the defendant is an inhabitant, had no application to an alien or a foreign corporation sued here, and *especially in a suit for infringement of a patent right;* and therefore such a firm or corporation might be so sued by a citizen of a State of the Union in any district in which valid service could be made on the defendant. That case is distinguishable from the one now before the court in two essential particulars: First. It was a suit against a foreign corporation ..... Second. *It was a suit for infringement of a patent right, exclusive jurisdiction of which had been granted to the Circuit Courts of the United States* by section 629, cl. 9, and section 711, cl. 5, of the Revised Statutes, reenacting earlier acts of Congress; and was therefore not affected by general provisions regulating the jurisdiction of the courts of the United States, concurrent with that of the several states." (Italics added.)

The quoted language is a clear indication that this Court did not consider its statements in the *Hohorst* case as being mere *dicta*. The same may be said of the following quotation from *General Electric Co. v. Marvel Rare Metals Co.*, 287 U. S. 430, 434:

> ".....until the enactment of §48 a suit for infringement might have been maintained in any district in which jurisdiction of defendant could be obtained. *In re Hohorst*, 150 U. S. 653, 661. And see *In re Keasbey & Mattison Co.*, 160 U. S. 221-230.."

Assuming for the purpose of argument that the state-

ments in the *Hohorst* case as to venue in patent cases were originally mere *dicta,* their repetition and approval by this Court in subsequent cases give them a much greater weight than usually accorded *dicta.*

To quote from 21 C. J. S. (Corpus Juris Secundum) Courts § 190 d:

> "*Dicta* frequently repeated and approved may acquire thereby strength and importance as precedents."

The foregoing rule applies especially to the statements made in the *Hohorst* case, for, as will hereinafter be pointed out, these statements as to venue in patent cases have been accepted for at least forty-five years by almost every court that has considered the question.

Under somewhat similar circumstances, this Court, in *Missouri v. Ross, Trustee,* 299 U. S. 72, 75, referring to a statement in a prior case, stated:

> "....It is true that this statement was not necessary to the decision; but it nevertheless correctly states our view as to the meaning of the clause under consideration, and is now definitely approved. *The decision in that case was made nearly thirty years ago, since which time the lower federal courts have almost uniformly followed the rule there stated.* .....These decisions are plainy correct, but if they are doubtful, we should at this late date hesitate to disturb them....." (Italics added.)

Before leaving this phase of the case, it is to be noted that in *Lumiere v. Mae Edna Wilder, Inc.,* 261 U. S. 174, 176, this Court definitely held that the general venue statutes do not apply to suits for copyright infringement. To quote from the late Justice Brandeis' opinion:

> "The venue of suits for infringement of copyright is not determined by the general provisions govern-

ing suits in the federal district courts. Judicial Code, § 51. . . . . ."

Manifestly, the reason for the foregoing decision is that the federal district courts have *exclusive jurisdiction* of copyright suits, and as was held in the *Hohorst* case the general statutes as to venue apply only to cases in which the federal and state courts have *concurrent jurisdiction*. Hence, the general venue statutes apply to trade-mark cases (*In re Keasbey & Mattison, supra*), but not to patent or copyright cases.

(b)

The history of Section 48 clearly shows that the general venue statutes were not intended to apply to patent suits.

As has been stated, prior to the Act of 1887 (Section 51) suit could be instituted against an inhabitant of the United States *in the district of which he was an inhabitant or in any district in which he was found*. The Act of 1887 restricted venue to the *district in which the defendant was an inhabitant*.

As we have seen, the Supreme Court in the *Hohorst* case held that the Act of 1887 applied only to cases in which the jurisdiction of the federal courts was concurrent with the courts of the several States. After this decision, there was considerable disagreement in the lower federal courts as to the question of venue in patent cases, until in the *Keasbey & Mattison* case, the Supreme Court again stated that the Act of 1887 did not apply to patent litigation. Thereafter, the lower federal courts on the authority of the *Hohorst* and *Keasbey & Mattison* cases held with substantial uniformity that defendants in patent cases could be sued wherever found (Circuit Court's opinion, R. 18).

However, principally because of the conflicting decisions prior to the *Keasbey & Mattison* case, there was considerable uncertainty as to the proper venue in patent cases. To remove this uncertainty, Congress passed the Act of 1897 (now Section 48), by the express terms of which a defendant in a patent case cannot be sued over his objection outside the district of which he is an inhabitant, *with the single exception of the district wherein he has a regular and established place of business and has committed an act of infringement.*

In support of the foregoing statement, reference is hereby made to the Congressional Record of February 16, 1897 (House of Representatives), pp. 1900-1901. Mr. Mitchell of the House Committee on Patents in explanation of the purpose of the Act of 1897 (now Section 48), stated:

> "Mr. Speaker, the necessity for this law grows out of the acts of 1887 and 1888 which amended the judiciary act. Conflicting decisions have even arisen in the different districts in the same States as to the construction of these acts of 1887 and 1888, and there is great uncertainty throughout the country as to whether or not the act of 1887 as amended by the act of 1888 applied to patent cases at all.
>
> "The bill is intended to remove this uncertainty and to define the exact jurisdiction of the circuit courts in these matters.
>
> "The committee have been extremely careful in the investigation of the matter before reporting the bill.
>
> "As the bill was referred to me, I wrote to a great many patent lawyers in different parts of the country, in order to get their views and objections, if any, and I find that they are all unanimously in favor of the bill as it is now reported, and state that it would tend not only to *define the jurisdiction of the circuit courts not now defined, but also limit that jurisdiction and so clearly define it that in the*

future there will be no question with regard to the application of the acts of 1887 and 1888.

* * * * *

".....The trouble has arisen in this matter that under the act of 1888 some of the courts were uncertain whether or not the law did or did not apply to patent cases, and therefore *this special bill relating to patents solely* has been brought up because of the indefiniteness and uncertainty arising from different constructions of the act of 1888 as applied to patent cases." (Italics added.)

As this Court held in *United States v. Great Northern R. Co.*, 287 U. S. 144, 154, and *Wright v. Mountain Trust Bank*, 300 U. S. 440, 463, in construing a particular statute about which there is some question, recourse may be had to its legislative history and to the statements made by those in charge of the bill during its consideration.

The legislative history of Section 48 and the statements made by Congressman Mitchell when the bill was favorably reported to the House of Representatives clearly indicate that it was the purpose of Congress to preclude a suit against a defendant in a district other than the one in which he resides, *with the single exception of a district in which he has a regular and established place of business and has committed acts of infringement.*

To enlarge the meaning of the phrase "the district of which the defendant is an inhabitant", appearing in Section 48, to include two or more districts in the same state would subject a defendant to a suit for patent infringement in a district in which he does not reside, and in which he has no regular and established place of business and has not committed an act of infringement. Such a construction of Section 48 would be contrary to the intent of Congress and would defeat the purpose for which the legislation was passed. It cannot, therefore, be the true construction.

For, as was stated by this Court in *Haggar v. Helvering*, 308 U. S. 389, 394:

> "All statutes must be construed in the light of their purpose....."

Had Congress intended that the words "the district of which the defendant is an inhabitant", appearing in Section 48, should be interpreted to mean "two or more districts in the same state", Congress would certainly have expressed that intention in unmistakable language. This is particularly so, since Section 52 was in existence long prior to the enactment of Section 48 in 1897, and there is no suggestion in the Congressional Record that Congress intended that an alleged infringer be sued in any part of the state wherein he resides, *except in the district of which he is an inhabitant* or *in which he has a regular and established place of business and has committed an act of infringement.*

(c)

An interpretation of Section 52 to make it apply to patent suits would render portions of the section inconsistent with each other.

The first sentence of Section 52 consists of two parts. The first part states:

> "When a State contains more than one district, *every suit not of a local nature*, in the district court thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; ....." (Italics added.)

This part of Section 52 is obviously inconsistent with Section 48. For, it states that a single defendant cannot be sued *outside of his own district*, whereas Section 48 states that in a patent suit a defendant may be sued either in his own district or *in any district where he has a reg-*

ular and established place of business and has committed an act of infringement.

The second part of the first sentence of Section 52 states:

> ".....but if there are two or more defendants, residing in different districts of the State, it may be brought in either district....."

The Circuit Court in its decision held that because of the words "every suit not of a local nature" in the first part of the sentence, the second part applied to patent suits (R. 20-21). This construction leads to rather a curious conclusion. Because of the words "every suit etc." in the first part of the sentence, *which part cannot possibly apply to patent suits*, the second part of the sentence is made to apply to patent suits. Such a construction of the sentence renders the two parts thereof inconsistent with each other, and hence cannot be the true one. (*Perrine v. Chesapeake & D. Canal Co.*, 9 How. (50 U. S.) 172, 187.)

It follows, therefore, that the words "every suit not of a local nature" do not include "patent suits". In fact, as we have seen, the general venue statutes (including both Sections 51 and 52) were intended to apply only to cases in which the federal courts have *concurrent jurisdiction* with the state courts. Federal jurisdiction in both patent and copyright cases is *exclusive* of the state courts.

What has been said on this phase of the case finds judicial support in *Cheatham Electric Switching Device Co. v. Transit Development Co.*, 191 Fed. Rep. 727, 731 (E. D. N. Y. 1911).

Referring to the Act of 1897 (now Section 48) and Section 740 (now Section 52), the Court stated:

> "It may be assumed that the word "defendant" in the statute of 1897 covers more than one party defendant, if there be joint infringers who can be sued in the same district. Under the law of 1897, an ac-

tion for the infringement of a patent can be brought against a party not a resident of the district, but infringing therein, and having a regular place of business therein. The first part of section 740 (that is the provision relating to the bringing of a suit against a single defendant in the district where he resides) would be inapplicable or would have no effect (because opposed to the statute of 1897) in the case of a non-resident, who had a place of business in the district of infringement. The reasoning in the cases of *In re Hohorst* and *Keasbey & Mattison Co., supra.,* would seem to make it follow that the second part of section 740 cannot be taken away from the first part of that section and applied by itself to patent suits merely because there may be more than one infringer who resides in another district of the same state, or has a regular place of business there. The instances in which the joint infringer is a citizen of the same state, rather than of an adjoining state, must be so few in number that it is unnecessary to do violence to the language of the statute for the sake of making it fit this particular action."

POINT III.

The decision of the Circuit Court constitutes a radical departure from the law relating to venue as it has been applied with substantial uniformity for at least 45 years.

As conceded by the Circuit Court (R. 18, lines 5-11), since the decision of this Court in *In re Keasbey & Mattison Co.*, 160 U. S. 221, the lower federal courts have held with substantial uniformity that Section 51 (one of the general venue statutes) does not apply to *suits for patent infringement.* Also this Court in *Lumiere v. Mae Ednae Wilder, Inc.*, 261 U. S. 174, 176, definitely held that Section 51 does not apply to *suits for copyright infringement.*

In each of the following cases, it was definitely held that Section 52 does *not* apply to *patent cases:*

Cheatham Electric Switching Device Co. v. Transit Development Co., 191 Fed. Rep. 727 (E. D. N. Y. 1911).

Gibbs v. Emerson Electric Mfg. Co., 29 Fed. Supp. 810 (W. D. Mo. 1939).

Gibbs v. Emerson Electric Mfg. Co., 31 Fed. Supp. 983 (W. D. Mo. 1940).

Motoshaver, Inc. v. Schick Dry Shaver, Inc., 100 Fed. Rep. (2nd) 236 (C. C. A. 9, 1938).

It has also been definitely held that Section 52 does not apply to *copyright cases* (*Salvatori v. Miller Music, Inc.*, 35 Fed. Supp. 845 (E. D. N. Y. 1940)).

The only case other than the one at bar in which it was held that Section 52 does apply to either patent or copyright cases is that of *Zell v. Erie Bronze Co.*, 273 Fed. Rep. 833 (E. D. Pa. 1921).

As was pointed out in the *Motoshaver* case, the late Judge Dickinson's decision in the *Zell* case was based upon the premise that prior to the enactment of Section 48 in 1897, infringers could be sued in any district wherever found, a premise which was held erroneous by this Court in *General Electric Co. v. Marvel Rare Metals Co.*, 287 U. S. 430, 434.

To quote from the *Motoshaver* case:

> "The court's reasoning in the *Zell* case is stated (pages 837, 838); '.....Had the act of 1897 been passed when infringers were suable in any district where found, the provision of the act limiting the venue to the district of the infringers and the district in which acts of infringement were committed and an office maintained, it might well be viewed as a restriction of the right of action against them. Inasmuch, however, as at the time the act was passed infringers could be sued only in the court of their own district, the addition of another court in which they were liable to process cannot be regarded as a

restriction, but an extension, of the rights of the plaintiff, and sections 51 and 52 gave further relief to plaintiffs broadly in all cases.'

"The *Zell* case was decided long before the Supreme Court's decision in the *General Electric* case. The statement in the *Zell* case that if prior to the Act of 1897, Section 48 Judicial Code, infringers could have been sued in any district where found (for service), that Act might be viewed as a restriction of the venue is correct. And since the *General Electric* case states they could have been so sued, **we hold that the venue in patent cases is determined by Section 48 and that Section 52 does not enlarge it.....**" (Emphasis added.)

The only diverse decision having been based upon an erroneous premise as to venue in patent cases prior to the enactment of Section 48, it is respectfully submitted that the doctrine approved in *United States v. Ryan,* 284 U. S. 167, 174 applies.

In the cited case, this Court referring to a federal statute, stated:

"If the point were more doubtful, we should hesitate to set aside, at this late date, the uniform construction given to the section with respect to this question by the lower federal courts for more than sixty years..."

To the same effect is this Court's decision in *Wright v. Central of Georgia R. Co.,* 236 U. S. 674.

The cited cases have particular application to the present situation. **For the decision of the Circuit Court constitutes a radical departure from the law relating to venue in a very important class of cases.**

CONCLUSION.

We therefore respectfully submit that the decision of the Circuit Court is erroneous and should be reversed.

Respectfully submitted,

CHARLES W. RIVISE,
Counsel for Petitioner.

A. D. CAESAR,
DAVID S. GIFFORD,
Of Counsel.

APPENDIX.

Section 24 of the Judicial Code (28 U. S. C. 41):

> The district courts shall have original jurisdiction as follows:
>
> * * * * *
>
> Seventh. Of all suits at law or in equity arising under the patent, the copyright, and the trade-mark laws.

Section 48 of the Judicial Code (28 U. S. C. 109):

> In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, *in the district of which the defendant is an inhabitant,* or *in any district in which the defendant,* whether a person, partnership, or corporation, *shall have committed acts of infringement and have a regular and established place of business.* If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons, or subpoena upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought. (Italics added.) (Mar. 3, 1897, c. 395, 29 Stat. 695; Mar. 3, 1911, c. 231, § 48, 36 Stat 1100).

Section 51 of the Judicial Code (28 U. S. C. 112):

> Except as provided in sections 113 to 117 no person shall be arrested in one district for trial in another, in any civil action before a district court; and *except as provided in sections* 113 *to* 118 *of this title, no civil suit shall be brought in any district court against any person by any original process or pro-*

ceeding in any other district than whereof he is an inhabitant; but where jurisdiction is founded only the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant, except that suit by a stockholder on behalf of a corporation etc..... (Italics added.) (R. S. 739; Mar. 3, 1875, c. 137, § 1, 18 Stat. 470; Mar. 3, 1887, c. 373, § 1, 24 Stat. 552, Aug. 13, 1888, c. 866, § 1, 25 Stat. 433; Mar. 3, 1911, c. 231, § 51, 36 Stat. 1101; Sept. 19, 1922, c. 345, 42 Stat. 849; Mar. 4, 1925, c. 526, § 1, 43 Stat. 1264; Apr. 16, 1936, c. 230, 49 Stat. 1213).

Section 52 of the Judicial Code (28 U. S. C. 113):

When a State contains more than one district, every suit not of a local nature, in the district court thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants, residing in different districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court of the proper district; and such original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same State. (Italics added.) (Act of May 4, 1858, c. 27, § 1, 11 Stat. 272; Feb. 24, 1863, c. 54, § 9, 12 Stat. 662; R. S. 740; Mar. 3, 1881, c. 144, § 2, 21 Stat. 507; Mar. 3, 1911, c. 231, § 52, 36 Stat. 1101).